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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION**

MARY ELIZABETH CROSKEY,

Plaintiff,

vs.

ESTATE of WILLARD LEE CHEYNEY,
through his Personal Representative,
RALPH DENNIS CHEYNEY; FEDEX
GROUND PACKAGE SYSTEM, INC.;
FEDEX CORP. and PATRICIA A.
THOMAS;

Defendants,

and

ESTATE OF WILLARD LEE CHEYNEY,

Third-Party Plaintiff,

vs.

CR ENGLAND, INC. and PATRICIA
A. THOMAS,

Third-Party Defendants.

CAUSE NO. CV-09-44-M-DWM

**THIRD AMENDED
COMPLAINT AND JURY
DEMAND**

INTRODUCTION

This action seeks redress for personal injuries sustained by Plaintiff when Willard Lee Cheyney negligently operated a motor vehicle and caused an accident on Interstate 90 near Missoula, Montana on December 21, 2007. At the time of the accident, Willard Cheyney was driving a vehicle for the Defendants FedEx Ground Package System, Inc. and/or FedEx Corp. and was acting as either the agent or employee of those Defendants. Alternatively, given the assertion of Plaintiff's employer that Patricia A. Thomas was an independent contractor and not a co-employee, Plaintiff alleges Ms. Thomas may have been culpable in causing her injuries. Count I alleges negligence; Count II alleges negligence *per se*; Count III alleges an alternate count involving Thomas' negligence and negligence *per se*. Plaintiff, Mary Elizabeth Croskey, alleges as follows:

PARTIES AND JURISDICTION

1. Plaintiff Mary Croskey is a citizen of the State of Michigan, and has resided there at all times relevant herein.

2. Willard Lee Cheyney, upon information and belief, was a citizen of the State of Montana and resided in Trout Creek, Sanders County, Montana, at all times relevant herein. Since the 2007 accident, Mr. Cheyney has died and his estate was opened on June 1, 2009. His estate is therefore a Defendant in this action, hereinafter called "Defendant Willard Cheyney." Ralph Dennis Cheyney is the Personal Representative of the Estate of Cheyney.

3. Defendants FedEx Ground Package System, Inc. and FedEx Corp. are foreign corporations based in Tennessee and legally incorporated in Delaware.

4. Defendant Patricia Thomas is a resident of Hammond, Indiana and was operating the commercial truck in which Plaintiff was riding at the time of the subject accident. According to filings made in this case, Defendant Thomas was not an employee of C.R. England at the time of the accident. If she is not a co-

employee, workers compensation laws' exclusive remedy provisions do not shield Ms. Thomas for any negligent conduct leading to the subject accident.

5. The matter in controversy exceeds, exclusive of interest and costs, the sum specified by 28 U.S.C. §1332. Pursuant to 28 U.S.C. §1391(a)(2), venue is proper in this Court because a substantial part of the wrongful acts and inactions of Defendants giving rise to this claim occurred in or near Missoula County and within the State of Montana.

STATEMENT OF FACTS

6. On or about December 21, 2007, Plaintiff was in the course and scope of her employment as a truck driver for CR England, Inc. She was the passenger in a commercial truck headed northwest on Interstate 90 near mile marker 95. Plaintiff's vehicle was in the left-hand lane of traffic.

7. At the same time and place, Defendant Willard Lee Cheyney was driving a 2003 Chevrolet sport-utility vehicle northwest on Interstate 90, in the right-hand lane of traffic.

8. Defendant Cheyney's vehicle had the logo of the Federal Express Defendants displayed prominently at the time of the accident.

9. The vehicle in which Plaintiff was riding was passing Defendant Cheyney's vehicle when Defendant Cheyney illegally entered the left-hand lane of traffic, causing the vehicles to collide. Defendant Patricia Thomas was operating the semi-truck at the time of the collision.

10. Defendant Willard Cheyney pleaded guilty to the charge of making an unsafe lane change in the Missoula County Justice Court on January 8, 2008.

11. Plaintiff was seriously injured.

COUNT I – NEGLIGENCE

Plaintiff realleges and incorporates by reference herein each and every allegation set forth above and, in addition thereto, alleges the following:

12. Although Defendant Willard Cheyney owed Plaintiff a duty to use reasonable care, he failed to drive in a reasonable and prudent manner taking into account all conditions and was therefore negligent.

13. As a result of Defendant Willard Cheyney's negligence, Plaintiff has suffered and continues to suffer personal injuries, bodily injuries, and has sustained and will sustain in the future, medical expenses, lost wages, pain and suffering, emotional distress, loss of ability to pursue her established course of life, and other associated damages and compensable injuries.

14. Defendants FedEx Ground Package System, Inc. and FedEx Corp. are liable for Defendant Cheyney's negligence because he was the agent or employee of said Defendants at the time of the accident.

COUNT II – NEGLIGENCE *PER SE*

Plaintiff realleges and incorporates by reference herein each and every allegation set forth above, and, in addition thereto, alleges the following:

15. Defendant Willard Cheyney violated Montana Code Annotated §§ 61-8-302, 61-8-323 and 61-8-328(1)(2007), each of which caused the accident. Defendant Willard Cheyney pleaded guilty to the charge of making an unsafe lane change in the Missoula County Justice Court on January 8, 2008. Each of the above-cited statutes was enacted to protect the drivers and passengers of vehicles in Montana from the type of harm Plaintiff has suffered. Defendant Willard Cheyney, as a driver in the State of Montana, was part of the class of persons regulated by these statutes. Thus, Defendant Willard Cheyney was negligent *per se*.

16. As a result of Defendant Willard Cheyney's negligence *per se*, Plaintiff has suffered and continues to suffer personal injuries, bodily injuries, and has sustained and will sustain in the future, medical expenses, lost wages, pain and

suffering, emotional distress, loss of ability to pursue her established course of life, and other associated damages and compensable injuries.

17. Defendants FedEx Ground Package System, Inc. and FedEx Corp. are liable for Defendant Cheyney's negligence because he was the agent or employee of said Defendants at the time of the accident.

COUNT III – NEGLIGENCE

Plaintiff realleges and incorporates by reference herein each and every allegation set forth above, and, per F.R.Civ.P. 8(d), alleges the following:

18. To the extent that Defendant Patricia Thomas was not a co-employee of Plaintiff and was a separately insured independent contractor of Plaintiff's employer, she owed Plaintiff a duty to use reasonable care to drive in a reasonable and prudent manner taking into account all conditions.

19. At the time of the collision, Defendant Thomas failed to drive in a reasonable and prudent manner and was therefore negligent.

20. To the extent that Defendant Thomas violated any Montana statutes governing the operation of motor vehicles on Montana highways, Plaintiff further alleges Defendant Thomas was negligent *per se*. Said motor vehicle statutes were enacted to protect the drivers and passengers of vehicles in Montana from the type of harm Plaintiff has suffered. Defendant Thomas, as a driver in the State of Montana, was part of the class of persons regulated by these statutes. Therefore, to the extent Defendant Thomas violated motor vehicle safety laws, she was negligent *per se*.

21. As a result of Defendant Thomas' negligence and/or negligence *per se*, Plaintiff has suffered and continues to suffer personal injuries, bodily injuries, and has sustained and will sustain in the future, medical expenses, lost wages, pain and suffering, emotional distress, loss of ability to pursue her established course of life, and other associated damages and compensable injuries.

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

1. For all general, special, and compensatory damages in an amount to exceed \$75,000 and to be proven at the trial of this action.
2. For all costs and expenses of suit as allowed by law.
3. For attorneys' fees as allowed by law.
4. For such further relief which to this Court may seem just and equitable.

JURY DEMAND

Plaintiff demands a jury trial.

DATED this 21st day of July, 2010.

DIX, HUNT & McDONALD

BY: /s/ Jonathan McDonald
JONATHAN McDONALD,
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 21st day of July, 2010 a true and correct copy of the foregoing **PLAINTIFF'S THIRD AMENDED COMPLAINT AND JURY DEMAND** was served on the following persons by the following means:

<u>1,2,3,4,5,6,7</u>	CM/ECF
_____	Hand Delivery
<u>3</u>	U.S. Mail
_____	Overnight Delivery Service
_____	Facsimile
_____	E-Mail

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